

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:08cr233**

**UNITED STATES OF AMERICA,**

**Vs.**

**RICHARD VARELA,**

**Defendant.**

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**ORDER**

**THIS MATTER** is before the court on defendant Richard Varela's *pro se* claim filed on behalf of Nathanael Fraes (#125). The government has filed a Motion to Dismiss (#127) such petition for a number of reasons, including the fact that such petition is untimely, unsigned by the actual applicant, and apparently submitted by a non-attorney on behalf of another person. All of the reasons listed by the government are appropriate reasons to dismiss such petition.

Foremost, Federal Rule of Criminal Procedure 32.2(c)(1)(A) provides, as follows:

[i]n the ancillary proceeding, the court may, on motion, dismiss the petition for lack of standing, for failure to state a claim, or for any other lawful reason. For purposes of the motion, the facts set forth in the petition are assumed to be true.

Fed.R.Civ.P. 32.2(c)(1)(A). Furthermore, 21, United States Code, Section 853(n)(3), applicable to this 18, United States Code, Section 981(a)(1)(C), forfeiture proceeding by virtue of 28, United States Code, Section 2461(c), requires that,

[t]he petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

21 U.S.C. § 853(n)(3). Section 853(n)(2) further provides, as follows:

[a]ny person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may, within thirty days of the final publication of notice or his receipt of notice . . . whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property.

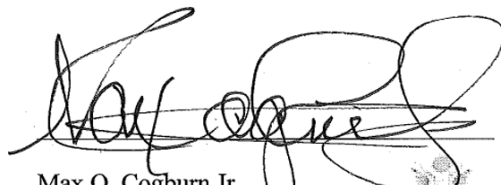
The Advisory Committee Notes to Rule 32.2(c)(1)(A) indicate that a motion to dismiss under Rule 32.2 may be treated in the same manner as a motion to dismiss under Fed. R. Civ. P. 12. Fed. R. Crim. P. 32.2(c), *Advisory Committee Notes* (2000 Adoption).

Finding that the petition is untimely as a matter of law, and that the United States properly published notice as shown in the pleading, the petition will; be dismissed

### **ORDER**

**IT IS, THEREFORE, ORDERED** that the government's Motion to Dismiss (#127) is **GRANTED**, and defendant Richard Varela's *pro se* claim filed on behalf of Nathanael Fraes (#125) is **DISMISSED**.

Signed: January 6, 2012



Max O. Cogburn Jr.  
United States District Judge